IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 10543 of 2004

Between:

Smt. Kosaraju Annapoorna, W/o Appa Rao,
R/o 9-162, Kummari Veedhi, Kaikalur (Village and Mandal),
Krishna District.

..... PETITIONER

AND

1 The Vice Chairman & Managing Director, A.P.S.F.C. Hyderabad.
2 The A.P. State Financial Corporation,
APSFC, P.B.No.760, 2nd Floor, Pioneer House, Labbipet, Bandar Road,

Vijayawada -10.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction declaring the action of the Respondents in issuing Auction Notice, dt. 17-5-2004 to the Petitioner without making recovery from the Loan borrowers is highly arbitrary, illegal and further direct the Respondents to recover the loan amount from the loan borrowers, if necessary by selling the properties offered by them for securing the loan, before taking coercive steps against the Petitioner.

Counsel for the Petitioner: MR.P.VENKAT RAO

Counsel for the Respondents: MS.Y.N.LOHITA (SC FOR AP FINANCE CORP)

The Court made the following:

ORAL ORDER:

A loan was sanctioned by A.P. Finance Corporation (APFC) to one M/s.Trans Medi Script Solutions (P) Ltd., Vijayawada for establishing a company in the year 1999. The company was in the business of medical, legal and insurance transcriptions. The petitioner was one of the guarantors for repayment of the loan amount and had offered his immovable property as collateral security by mortgaging the same. The respondent Corporation by notices dated 27.04.2004 and 17.05.2004 informed the petitioner that the outstanding amount due on account of the loan obtained by M/s. Trans Medi Script Solutions (P) Ltd., Vijayawada as specified in the notices is not paid up by him, his properties offered as collateral security will be put to sale. The second notice dated 17.05.2004 reiterates the notice to the petitioner affording time to him upto 25.05.2004. The details of arrears of the loan amount as on 30.04.2004 have also been stated in the said notice dated 17.05.2004. Aggrieved thereby, the writ petition is filed contending that the conduct of the respondent Corporation in seeking to recover the amounts due from the petitioner as guarantor without proceeding against the principal borrowers is arbitrary and illegal, and he seeks a direction to the respondents to recover the loan amount from the principal borrowers, if necessary, by selling the properties offered by them for securing the loan.

On behalf of the respondent Corporation a counter-affidavit has been filed by the Senior Branch Manager. It is stated that a term loan of Rs.20.00 lakh was sanctioned to M/s. Trans Medi Script Solutions (P) Ltd., Vijayawada on 14.03.2000 for setting up a medical transcription unit, out of which, an amount of Rs.14,75,417/- was released for acquisition of equipment etc. The company had started operations in 2000-01. The writ petitioner had provided collateral security for the loan sanctioned and disbursed to the company by the respondent Corporation, by creating an equitable mortgage of the house property bearing Door No.9-162, Kaikaluru, Krishna District. The counter-affidavit states that despite issuance of several notices and letters to the principal borrowers, they had not responded nor had the petitioner as a guarantor responded to the notices dated 10.03.2004 and 27.04.2004. Therefore, the notice dated 17.05.2004 was issued granting time till 25.05.2004 to clear the outstanding dues duly intimating the petitioner that in default, appropriate steps would be taken for recovery of dues, if necessary, by putting to sale the properties offered by the petitioner by way of collateral security. It is further stated in the counter-affidavit that the amount due as on 30.04.2004 including interest is to a tune of Rs.2,39,400/- and on account of default in payment of these amounts, the outstanding dues including the principal and interest, amount to Rs.11,21,400/-. The counter-affidavit also asserts that the Directors of the loanee company had not offered any collateral security in respect of any properties owned by them except a fixed deposit receipt for an amount of Rs.35,000/- belonging to one of the promoters-Shaik Ibrahim which was pledged in favour of the respondent Corporation as collateral security. The Corporation is at liberty and legally entitled to proceed even against the guarantors is sum and substance of the contention urged on behalf of the respondent Corporation. It is also stated that except the notice dated 17.05.2004, the respondents had not proceeded, at the time of filing of the writ petition, to put the properties of the petitioner to sale and aggrieved by a mere notice issued by the respondent Corporation, the petitioner has approached this Court without any substantive cause of action.

The petitioner's contention that the respondent Corporation is disabled in law from trying to recover the amounts due to it from the guarantors without first proceeding against the principal borrowers, is a contention that has no foundation on any legal principles. The petitioner does not substantiate the legal basis for this contention. At any rate, the writ petition has been filed on the basis of mere notice dated 17.05.2004 issued by the respondent Corporation calling upon the petitioner to clear the amounts due or else that action will be initiated to proceed against the properties offered as collateral security. This notice does not per-se provide any cause of action nor is the notice stricken with the voice of any illegality, arbitrariness or any other infirmity, warranting interference in the writ petition.

The writ petition is misconceived and is accordingly dismissed. No costs. The interim order dated 25.06.2004 stands dissolved.

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28.12.2004

VGB

To

1 The Vice Chairman & Managing Director, A.P.S.F.C. Hyderabad.
2 The A.P. State Financial Corporation,
APSFC, P.B.No.760, 2nd Floor, Pioneer House, Labbipet, Bandar Road,

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3 2CD copies.